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To: [Eric Blischke/R10/USEPA/US@EPA](#); [Chip Humphrey/R10/USEPA/US@EPA](#)
Cc: [BURKHOLDER Kurt](#); [YOUNG Cyril](#); [Perry Lynne](#); [MCCLINCY Matt](#); [GAINER Tom](#); [POULSEN Mike](#); [KEPLER Rick J](#)
Subject: FW: PH ARARs package
Date: 12/18/2009 04:31 PM
Attachments: [EPAcoverletterARARs.doc](#)
[CompARARslist1209.xls](#)
[ARARSEnclosure2121109.doc](#)
[Enclosure3_RegsGuidance_notARARs_121109.doc](#)

Chip & Eric,

During our 12/16 TCT mtg we briefly discussed DEQ's concerns..., based on our preliminary & limited review..., on EPA's "PH ARARs package" (Chip's 12/11/09 e-mail below). I understand EPA wants to finalize this document & submit it to the LWG ASAP to preserve the project schedule as best as possible. I fully support accelerating &/or preserving the project schedule. However, based on our preliminary & limited review..., we have a number of significant concerns with the "PH ARARs package", but we have not had the chance to fully review the document or discuss the document with Oregon DOJ. During the 12/16 TCT mtg, we agreed that since DEQ wouldn't give you a comprehensive review of the "PH ARARs package"..., that we would provide you comments on Enclosure 3 & provide you with a timeframe for our review of "PH ARARs package".

1) Comment on Enclosure 3 "Regulations, Guidance, Etc. Determined Not to be ARARs"- Enclosure 3 lists & discusses the certain regulations, guidance, etc previously identified by DEQ, the LWG &/or others. Here are my specific comments.

a) OR Environmental CU Law- Current & reasonably likely land & beneficial water uses- You recommend dropping these regulations because they are less stringent than CERCLA. I recommend they are retained because I'm not sure CERCLA statutory requirements will necessarily trump State law in the uplands. This issue will be further considered in our review of the "PH ARARs package".

b) Removal-fill in OR Essential Indigenous Anadromous Salmonid Habitat- This is a Division of State Lands regulation that I ask **Cy Young** to weigh-in on.

c) OR T&E Wildlife Species- Incidental Take Permits- I agree that no federal, state, or local permits are required for on-site CERCLA response actions, but those actions must still comply with the substantive requirements of the permit.

- d) Lower Willamette River Management Plan- This is a Division of State Lands regulation that I ask Cy Young to weigh-in on.
 - e) Classification of Water as to Highest and Best Use- Willamette Basin Program- I'm OK with dropping this.
 - f) Guidance for Identification of Hot Spots- I'm OK dropping this guidance as a TBC..., particularly because your list of State ARARs specifically identifies state hot spots regulations.
 - g) Guidance for Conducting Beneficial Water Use Determination at Environmental CU Sites- I'm OK with dropping this guidance as a TBC. As I stated above, I'm not sure CERCLA statutory requirements will necessarily apply or be relevant & appropriate to the uplands. This issue will be further considered in our review of the "PH ARARs package".
 - h) Guidance of Consideration of Land Use in Environmental Remedial Actions- I'm OK with dropping this.
 - i) State Harbor Line Statute- I'm OK with dropping this.
 - j) Watershed Management & Enhancement & the OR Plan- I'm OK dropping this.
- 2) Provide you a timeframe for DEQ's review of the "PH ARARs Package"- Again, I realize you want to finalize your letter to the LWG ASAP..., & I want to support that timeframe. However, I won't be able to meet with DOJ until after the 1st of the year. I'll focus my attention on the issue & try to fully reply to the draft letter by late-1/10 or earlier if possible. I'll offer to discuss our review & our intentions regarding possibly disputing the issues prior to submitting a reply to your draft letter.

Cy & Lynne,

Please note I've asked you to look at 2 DSL regulations [b) & d) above] that EPA wants to drop as ARARs.

Jim Anderson

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-----Original Message-----

From: Humphrey.Chip@epamail.epa.gov

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Sent: Friday, December 11, 2009 3:34 PM

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Subject: PH ARARs package

PH team

Attached is the latest version of the ARARs package that we have
been

preparing for transmittal to the LWG. This will be one part of
EPA's

overall guidance to the LWG to keep the FS moving forward. In
addition

to the ARARs, we are also working on a response to the LWG's Nov
17th FS Alternatives presentation and preliminary comments on the
risk assessments.

The ARARs package includes a cover letter and 3 enclosures

- the full list of ARARs identified to date for use in the FS

evaluations

- EPA's rationale on application of SDWA and AWQC
- list of regulations and guidance that may have been previously proposed as ARARS or TBCs but EPA has determined are not ARARS

Our goal is to send this package to the LWG by the end of next week if possible. Please let us know if you have any comments before the end of

the week. We can set up time during next weeks TCT to discuss these or

set up a separate discussion if that works better.

thanks

Chip

(See attached file: EPAcoverletterARARS.doc)

(See attached file: CompARARSlist1209.xls)

(See attached file: ARARSEnclosure2121109.doc)

(See attached file: Enclosure3 RegsGuidance notARARS 121109.doc)

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